has been deprived;—that is, he may proceed to make and sell, he can assign, and for his benefit others must forbear.

In the case under discussion, if the sub-assignee owes any duty to the plaintiff, it is by reason of the contract of assignment between the assignee and the sub-assignee. Of that contract the plaintiff is a creditor-beneficiary, and if it gives him a right against the sub-assignee to the payment of royalties, he can enforce that right by the enforcement of a vendor's lien upon the copyright (in case he reserved a lien) or he can get a judgment or decree that the sub-assignee shall pay the royalties promised. But if it does not give him such a right against the sub-assignee, he should be given neither a judgment for payment nor a decree for an accounting; he is entitled to the benefits of his lien and nothing more. If there were a physical *res* the lienor would get it or have it sold, but he would get no accounting. There being no physical *res,* he must be content with the incorporeal *res,* the copyright itself.

It appears therefore that a decree that the sub-assignee shall account is the recognition of a right in a creditor-beneficiary created by a contract between two other persons, a contract to which he was not a party. Such an account had been decreed in previous English cases,[18] and such would have been the decree in *Barker v. Stickney* had the court been able to discover a lien reserved. In the one Massachusetts case on the point it was held to be the sub-assignee's duty to the plaintiff to pay the royalties as promised, and not merely to pay the royalties to the extent of profits made.[19] By such means the unjust rule denying legal rights to a contract-beneficiary can be gradually undermined and abandoned.

A. L. C.

FULL FAITH AND CREDIT TO JUDGMENTS OF OTHER STATES

The full faith and credit clause of the federal constitution provides that

"Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."[1]

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[18] See cases cited in note 12, *supra.*

[19] *Paper Stock D. Co. v. Boston D. Co., supra.* See also *Forbes v. Thorpe* (1911) 209 Mass. 570, 95 N. E. 955. This is exactly paralleled by the holding that where property is left to X by will, on condition that a payment be made to A, the acceptance of the property by X creates a legal duty enforceable at law by A, a duty to pay the amount specified even though it exceeds the value of the property received by X. *Felch v. Taylor* (1832, Mass.) 13 Pick. 133; *Adams v. Adams* (1867, Mass.) 14 Allen, 65; *Bishop v. Howarth* (1890) 59 Conn. 455, 22 Atl. 432; *Messenger v. Andrews* (1828, Ch.) 4 Russ. 478.

[1] Art. 4, sec. 1.

The federal statute passed in pursuance thereof reads as follows:

"And the said records or judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."[2]

What effect do these provisions require one state to give to judgments duly rendered in other states? As is well known, great confusion has existed with reference to this matter, a confusion which has not yet been dissipated, if we may judge from the decision in the recent case of *Kenney v. Supreme Lodge, etc., Loyal Order of Moose* (1918, Ill.) 120 N. E. 631. The defendants in that case by their acts in Alabama had caused the death in that state of the plaintiff's intestate. The plaintiff sued and obtained judgment in Alabama under the wrongful death statute of that state. The judgment not having been paid, the plaintiff brought the present action in Illinois, basing his claim on the Alabama judgment. An Illinois statute provided that "no action shall be brought or prosecuted in this state to recover damages for a death occurring outside of this state." The Supreme Court of Illinois sustained a plea to the jurisdiction, on the ground that the statute in question deprived the courts of Illinois of jurisdiction, not only over the original cause of action but also over a suit founded upon the judgment of another state based upon that cause of action. In reaching its conclusion the courts argued as follows: We have previously held that under our statute Illinois courts have no jurisdiction to entertain suits for damages for wrongful death where the death occurs outside the state.[3] The full faith and credit clause of the federal constitution does not prevent us from going behind a judgment of another state to examine into the nature of the original cause of action, and "if it appears that the courts would not have had jurisdiction of the subject matter of the original action, it will not have jurisdiction of the action on the judgment."

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[2] U. S. Rev. St. sec. 905; U. S. Comp. St., 1916, p. 2431. It is interesting to note that the Australians, who considered very carefully the relevant provisions of our constitutional law when framing the corresponding portions of the Commonwealth of Australia Constitution Act (1900) 63 and 64 Vict., ch. 12, obviously were of the opinion that we had not gone far enough, for they provided as follows: "Sec. 51. The Parliament shall have power to make laws with respect to: (xxiv.) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States; (xxv.) The recognition of the laws, the public Acts and records, and the judicial proceedings of the States." "Sec. 118. Full faith and credit shall be given, throughout the Commonwealth, to the laws, the public Acts and records, and the judicial proceedings of every State." For a discussion of the scope of the powers thus conferred upon the Australian Parliament see Quick and Garran, *Annotated Constitution of the Australian Commonwealth*, 613-621.

[3] *Dougherty v. American, etc. Co.* (1912) 255 Ill. 369, 99 N. E. 619; *Walton v. Pryor* (1916) 276 Ill. 563, 115 N. E. 2.

Any such result is of course opposed to the view expressed in an early case by Chief Justice Marshall, to the effect "that the judgment of a state court should have the same credit, validity and *effect* in every other state in the United States which it had in the state where it was pronounced, and that *whatever pleas would be good to a suit thereon in such state, and none others, could be pleaded in any other court of the United States.*"[4]

Although *dicta* in later cases threw much doubt upon the validity of Chief Justice Marshall's statement, the Supreme Court followed it in 1908 in the case of *Fauntleroy v. Lum*,[5] in which the majority of the court, speaking through Mr. Justice Holmes, said: "We assume that the statement of Chief Justice Marshall is correct." In the case last cited the Mississippi Supreme Court interpreted a Mississippi statute worded in a manner similar to that in the instant case so as to deprive Mississippi courts of jurisdiction both of the original cause of action and of a suit founded upon a Missouri judgment based upon that cause of action. This was reversed by the Supreme Court of the United States, four justices dissenting. The decision in the principal case seems clearly to be in conflict with the decision in *Fauntleroy v. Lum* and an attempt to revert to the *dicta* found in earlier cases.

Aside from the authority of *Fauntleroy v. Lum*, the propositions of the Illinois court are, it is submitted, demonstrably unsound. Even as applied to the original cause of action the interpretation of the state statute is open to serious criticism, as the argument of Mr. Justice Holmes in *Fauntleroy v. Lum* clearly shows. The statute reads that *"no action shall be brought or prosecuted,"* etc. Now the statute of frauds reads: "No action shall be brought," etc., but no one imagines that it is directed to the jurisdiction, *i. e.*, the power, as distinguished from the duty, of the court to act.

If the view of the court in the principal case should prevail, apparently judgments of other states could be prevented from having consequences of any importance in a given state by means of a very simple device. Let the state enact, for example, a statute providing that the state courts shall not have jurisdiction of suits based either on any tort cause of action where the tort is committed out of the state, or on the judgment of another state founded upon such a tort cause of action: if we accept the view taken in the principal case, the full faith and credit clause is not violated, for Illinois is not bound to confer jurisdiction on her courts. By a series of similar statutes a state could, if it so wished, close the door to the enforcement in the state courts of practically all judgments of other states, for, since execution can not be issued in one state on the judgments of other

[4] *Hampton v. McConnell* (1818, U. S.) 3 Wheat. 234. The italics in this and following quotations are those of the present writer.

[5] 210 U. S. 230, 28 Sup. Ct. 641.

states, the only way to give them validity in other states is to permit new judgments based upon them to be entered. The mere statement of this result ought to suffice without more to convince one of the unsoundness of the proposition upon which it is based.

Equally startling is the proposition of the Illinois court that "where an action is brought upon a judgment rendered in another state, the court may examine into the nature of the cause of action upon which the judgment is founded, for the purpose of determining whether it would have jurisdiction of the subject-matter of the action, and *if it appears that the court would not have had jurisdiction of the original action it will not have jurisdiction of the action on the judgment.*"[6] Surely this proposition cannot be supported, consistently with the full faith and credit clause and the act of Congress passed in pursuance thereof. It is entirely within the powers of State X to deny, if it so pleases, jurisdiction to its courts over action for torts committed outside the state—that no one denies. This denial is, of course, based upon the subject-matter of the suit—a foreign tort. But if after personal service the injured person has obtained a judgment against the tort-feasor in a state court which, under the law in force where the suit is brought, has jurisdiction, and the judgment debtor has without paying the judgment gone into State X, may the latter close the doors of its courts to the judgment creditor merely by saying: "Our law gives our courts no jurisdiction"? This cannot be the law unless the full faith and credit clause is to be reduced to a nullity, and that will not happen so long as the decision in *Fauntleroy v. Lum* stands.[6a] Moreover, aside

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[6] The only authority cited is the well known case of *Wisconsin v. Pelican Ins. Co.* (1888) 127 U. S. 265, 8 Sup. Ct. 1370. While some of the *dicta* in that case may give the Illinois court aid and comfort, the decision settled merely that the original jurisdiction given to the United States Supreme Court by article 3, sec. 2 of the Constitution is confined to "controversies of a civil nature," which the judgment in question was not. The case raised absolutely no question under the full faith and credit clause. The *dicta* referred to were effectually disposed of by Holmes, J., in *Fauntleroy v. Lum,* cited above.

It is beyond the scope of the present Comment to discuss the validity of the commonly recognized doctrine that a state may refuse to give effect within its borders to the judgments of other states based upon penal laws. The leading case in the federal Supreme Court—*Huntington v. Atrill* (1892) 146 U. S. 657, 13 Sup. Ct. 224—while recognizing the doctrine in the opinion, does not actually establish it, for the decision was that the judgment in question was based upon a law not penal in character and therefore entitled to full faith and credit. Early American cases in the state courts gave effect to judgments based upon penal laws. *Spencer v. Brockway* (1824) 1 Ohio, 259; *Healy v. Root* (1831 Mass.) 11 Pick. 389; *Indiana v. Helmer* (1866) 21 Ia. 370.

[6a] However, it must be noted that much of the reasoning, although not necessarily the decision, of Mr. Justice Holmes in *Anglo-American Provision Co. v. Davis Provision Co.* (1903) 191 U. S. 373, 24 Sup. Ct. 92 bears out the contention of the Illinois court. In that case the learned justice wrote: "It has been laid down . . . in [previous cases] that this provision of the Constitution estab-

from all other considerations, may it not fairly be argued that the purpose of the Illinois statute—if indeed it had any definite purpose—had been attained when the plaintiff sued and obtained judgment elsewhere than in Illinois? So far as one can fathom the depths of legislative wisdom, the object of the Illinois legislature in limiting their statute relating to death by wrongful act in the manner stated was to prevent Illinois courts from being vexed with the determination of facts—including foreign law—relating to death outside the state. Into none of these does an Illinois court have to go when suit is brought there on the judgment of another state. To permit the injured person (the administrator of the person killed) to sue in Illinois on the judgment of the other state would not, therefore, involve the evils—real or supposed—aimed at by the statute.[7] Be it noted also that the words of the statute, literally construed, embrace only the action upon the original cause of action—a tort action "on the case"—and not the action on the judgment—an action of "debt on a record."[8] It is only by giving to the words of the statute an unnecessarily broad construction that the court is able to reach its conclusion.

From whatever angle the matter is approached, therefore, whether of reason or of authority, we must conclude that the decision in the principal case denies to the judgment of a sister state that full faith and credit which is demanded by the federal Constitution and the statute of Congress passed in pursuance thereof.

W. W. C.

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lishes a rule of evidence rather than of jurisdiction. The Constitution does not require the State of New York to give jurisdiction to the Supreme Court against its will." As applied to the case then before the court this was true, for the plaintiff was a foreign corporation. If we accept it as generally true, however, it is difficult to see how the decision in *Fauntleroy v. Lum* can stand, for there the United States Supreme Court refused to follow the construction given by the Mississippi Supreme Court to a state statute. If the State was not bound to give any jurisdiction to its courts, on what ground does the United States court depart from the state court's interpretation of the state statute?

[7] One can not but wonder why the Illinois legislature should desire to place any such limitation upon the bringing of actions. We constantly permit suits in our state courts for torts committed outside the state boundaries. As the Illinois law stands, even if full faith and credit be given to judgments of other states, one who according to the law of the state where the act is done has tortiously killed another may take himself and his property into Illinois and remain free from any enforcement of the resulting liability, unless by chance the one to whom he is liable is a citizen of another state and can sue in the federal courts.

[8] *Mills v. Duryea* (1813, M. S.) 7 Cranch. 481; *Andrews v. Montgomery* (1821, N. Y. Sup. Ct.) 19 Johns. 162.